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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,967	01/16/2002	Jesse John Kiefer	A71-07LAV	3892

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

106047,967

Applicant(s)

WIEFFER ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 6-11-03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-18 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-18 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 061103
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-18 are indefinite in failing to recite for what the "effective amount" of the calcium compound is effective.

Correction is required without new matter.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 13-15 and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bell et al (WO 00/06127, pages 7, 10, 11, 13-15). Bell et al discloses a centerfilled chewing gum composition including a shell portion and a centerfill (soft core) portion. The centerfill includes a mixture of nutraceuticals, e.g. 50% calcium gluconate

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and a botanical (pages 10 and 11). Also present in the soft core may be a hydrocolloid (page 15), which is equivalent to a suspending agent as claimed by applicant in claim 2, and glycerin (page 13).

6. Claims 4-9, 11, 16, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al.

Finding the optimum viscosity of the centerfill portion (claims 4-6) and the optimum calcium compound particle size (claims 7-9 and 11) would require nothing more than routine experimentation by one reasonably skilled in this art. The number of pieces of the gum which are chewed by an individual in one day is merely an obvious matter of choice depending upon desired results and personal preference and in the absence of unexpected result is entitled to no patentable weight.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al in view of Friello et al or Glass et al.

It would have been obvious to use pectin, alginate or CMC as the hydrocolloid in Bell et al since any one of these hydrocolloids is conventionally included in the centerfill portion of a chewing gum which also contains glycerin, as evidenced by Friello et al (col. 1, line 65 to col. 2, line 10) or Glass et al (col. 2, lines 45-65).

8. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al as applied to claims 4-9, 11, 16 and 18 above, and further in view of Cherukuri et al (4,352,823, col. 2, lines 24-27 and 45-68; col. 4, lines 37-47 and 68 and col. 8, lines 9-11).

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It would have been obvious to include calcium carbonate as a filler-texturing agent in the centerfill core of Bell et al since it is conventional to include calcium carbonate in the soft core portion of a chewing gum which has an outer shell, as evidenced by Cherukuri et al.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday - Friday from 10:30 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Corbin/.af
May 12, 2004



ARTHUR L. CORBIN
PRIMARY EXAMINER
5-14-04